



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/074,992

02/13/2002

William A. Burris

6883

37211

7590

06/19/2006

BASCH & NICKERSON LLP

1777 PENFIELD ROAD

PENFIELD, NY 14526

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/074,992

Applicant(s)

BURRIS ET AL.

Examiner

Krisanne Jastrzab

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

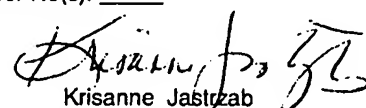
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Krisanne Jastrzab  
Primary Examiner  
Art Unit: 1744

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant argues that Conteras teaches away from venting and ozone destruction because of the desire to maintain "actively ozonated water", a phrase which Applicant asserts means that excess ozone is output with the water, however, the Examiner would disagree. Conteras clearly and explicitly defines "active" to mean water containing dissolved ozone in its active state. It is well recognized in the art, and also explicitly explained in Conteras, that ozone having disinfecting properties has a half-life and will return to a more stable, non-reactive state within a set period of time. Conteras' goal in maintaining "actively ozonated" water is to maintain water with ozone having its disinfecting properties, not an excess thereof, which goal is clearly not teaching away from handling the excess ozone off-gas with venting and destruction means. See the abstract of Conteras, column 1, lines 15-55 and column 2, lines 10-15. Applicant also argues that Burris '993 is not applicable because Applicant alleges that the Burris system is a batch system, however, the Examiner would point out that Conteras allows for either periodic or continuous ozonation, and the embodiment of Burris in Fig. 5, discussed beginning at column 5, line 20 is clearly a recirculating system. Applicant further argues that Burris is solely directed to purifying liquid not creating a disinfecting liquid, however, the Examiner would disagree and note that Burris clearly recites that application of the apparatus includes providing disinfecting liquids, see column 2, lines 39-40. Applicant also argues that the Examiner's motivation to protect the users of the apparatus by including the off-gas handling means of Burris in the system of Conteras finds no basis in the references themselves, however, the Examiner would strongly disagree and note that Burris clearly teaches the safety benefit of utilizing off-gas handling means and the common sense application of that benefit is proper motivation for the combination. The Examiner would additionally note that venting and reducing the ozone off-gas of Conteras instead of returning it to the tank would optimize the teachings of maintaining active ozone by reducing the "oldest" ozone found in the off-gas while introduction of the "fresh" ozone continues. The Examiner would further note that motivation is also proper when arrived at from knowledge generally available to one of ordinary skill in the art, and the potential hazard of ozone and the preferred destruction thereof before release into the atmosphere is knowledge generally available to one of ordinary skill in the art. Applicant also argues that rejection of claims 7-9 stating that the Examiner mischaracterized the teachings and that a static mixer enhances the activity of the positive displacement pump, but does not replace it. The Examiner would note that she did not assert the equivalence of the pump and the static mixer, but of the mixer and venturi means (with typographical errors, however, the appropriate and clear portions of Burris were identified), Burris clearly identifies a plurality of equivalent means of mixing the ozone with the liquid, including a positive displacement pump by itself, such a pump followed by a static mixer or venturi means to provide further mixing or by use of a gas diffuser (see column 4, line 52 through column 5, line 8 and Figs. 2-4). Applicant argues that the limitations of claims 12 and 13 are not met and that the reference to separations means in Conteras including tube 26 are an improper interpretation of "barrier means", the Examiner did not assert that the tubing 26 of Conteras was a barrier means, merely the means drawing the ozone off-gas from the separation headspace of the tank. The combination with Burris properly provides the ozone reducer in that line and the ozone reducer of Burris includes a porous, hydrophobic barrier layer to prevent liquid from reaching the reduction catalyst (see column 3, lines 44-56 and column 5, lines 20-36). Applicant argues that the limitation of claim 14 wherein the liquid source pressurizes the system is not met, however, the Examiner would point to column 7, lines 35-41 of Burris which clearly teaches the use of either a pump or a pressurized liquid source. Applicant further argues that the waste line of claim 16 and the passage through a cuspidor as in claim 17 are not met, however, the Examiner would again point to column 7, lines 35-41 of Burris which teaches the provision of drain means and to the abstract of Conteras teaching the application of the water ozonation system for dental operator procedures which intrinsically include the provision of cuspidor drain structure. Applicant further argues that the ozone sensor and alarm means of claim 19 and the control means of claim 25 are not taught, however, the Examiner would point to Burris column 2, lines 23-33. Applicant also argues that the provision of dried air in claim 23 is not taught, however, the Examiner would point to column 3, lines 8-10 of Burris. Applicant further argues that application to handpieces as in claims 27-29 is not taught, however, the Examiner would again refer to the abstract of Conteras teaching the application of the system to dental operator procedures which intrinsically include dental handpieces. Further, Applicant argues that one of ordinary skill would not have been motivated to substitute the corona discharge ozone generator of Burris for the UV generator of Englehard, and further argues that the Examiner is now applying Conteras in this rejection based on her reference to Conteras in the responding to Applicant's previous arguments. The Examiner would maintain that the substitution is proper because the corona discharge and UV ozone generators are well recognized as equivalents in the art. The Examiner pointed to Conteras merely as showing the state of the prior art recognition of their equivalence by explicitly stating such, and thus supporting the Examiner's assertion of the recognition in the art. The Examiner notes Applicant's submission of the "Ozone Reference Guide", as indicative of some variation in system requirements for the use of UV or corona discharge generators, however, the Examiner would maintain that such variations do not discount the fact that both UV and corona discharge generators form disinfecting concentrations of ozone. Finally, Applicant again refers to limitations of claims 8, 14, 16-17, 19, 23 and 25 and again the Examiner would point Applicant to those recitations in Burris stated above and in the rejection pertaining to the limitations of those claims.